

*****DRAFT - NOT FOR FILING*****

3901-5-11 Use of senior-specific certifications and professional designations in the marketing, solicitation, negotiation, sale, or purchase of a life or health insurance policy or annuity.

(A) Purpose

The purpose of this rule is to set forth standards to protect consumers from dishonest, unfair, deceptive, misleading, and fraudulent trade practices with respect to the use of senior-specific certifications and professional designations in the marketing, solicitation, negotiation, sale, or purchase of, or advice made in connection with, life or health insurance, or an annuity product.

(B) Authority

This rule is ~~adopted~~ promulgated pursuant to the ~~superintendent's~~ authority vested in the superintendent under sections 3901.041, ~~3901.19 to 3901.26, and 3905.14~~ 3901.21, 3901.212, 3905.0611, and 3905.28 of the Revised Code.

(C) Application and scope

This rule ~~shall apply~~ applies to any marketing, solicitation, negotiation, or sale or purchase of, or advice made in connection with, a life or health insurance policy, or annuity product by an insurance agent in this state.

Nothing in this rule ~~shall limit~~ limits the superintendent's authority to enforce existing provisions of law.

(D) Definitions

- (1) ~~"Insurance agent" or "agent"~~ "Agent" or "insurance agent" means any person who, in order to sell, solicit, or negotiate life and health insurance and annuities, is required to be licensed under the laws of this state.
- (2) "Financial services regulatory agency" ~~includes, but is not limited to,~~ means an agency that regulates insurers, insurance agents, broker-dealers, investment advisers, or investment companies as that term is defined ~~under~~ in the "Investment Company Act of 1940," 15 U.S.C. 80a-3, as amended.
- (3) "Health insurance" ~~includes, without limitation,~~ means any policy of individual or group sickness and accident insurance, long term care insurance, medicare advantage, medicare supplement, and medicare part D.

(E) Prohibited uses of senior-specific certifications and professional designations

- (1) It is an unfair and deceptive trade practice under sections 3901.19 to 3901.26 of the

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Revised Code and a dishonest practice under division (B)(9) of section 3905.14 of the Revised Code for an insurance agent to use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that the insurance agent has special certification or training in advising or providing services to seniors in connection with the marketing, negotiating, soliciting, selling, or purchase of a life or health insurance policy, or annuity product or in the provision of advice as to the value of or the advisability of purchasing a life or health insurance policy or annuity product, either directly or indirectly, through publications or writings, or by issuing or promulgating analyses or reports related to a life or health insurance or annuity product.

- (2) The prohibited use of senior-specific certifications or professional designations includes, but is not limited to, the following:
- (a) Use of a certification or professional designation by an insurance agent who has not actually earned or is otherwise ineligible to use such certification or designation;
 - (b) Use of a nonexistent or self-conferred certification or professional designation;
 - (c) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the insurance agent ~~using the certification or designation~~ did not complete or does not have; or
 - (d) Use of a certification or professional designation that was obtained from a certifying or designating organization that:
 - (i) Is primarily engaged in the business of instruction in sales or marketing;
 - (ii) Does not have reasonable standards or procedures for assuring the competency of its certificants or designees;
 - (iii) Does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or
 - (iv) Does not have reasonable continuing education requirements for its certificants or designees ~~in order~~ to maintain the certificate or designation.

(F) ~~Designations or professional certifications from accredited entities~~

There is a rebuttable presumption that a certifying or designating organization is not disqualified under this rule when the certification or designation issued by the organization does not primarily apply to sales or marketing and has been accredited by one of the following accrediting entities:

- ~~(1) There is a rebuttable presumption that a certifying or designating organization is not disqualified under this rule when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization~~

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~~or the certification or designation in question has been accredited by one of the following accrediting entities:~~

~~(a) The "American National Standards Institute" ("ANSI");~~

~~(b) The "National Commission for Certifying Agencies"; or~~

~~(c) Any organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."~~

~~–(1) The "American National Standards Institute" ("ANSI");~~

~~–(2) The "National Commission for Certifying Agencies"; or~~

~~–(3) Any organization actively recognized as an accrediting agency by the U.S. Department of Education pursuant to 34 CFR part 602.~~

(G) Words or combinations of words implying special training in advising or providing services to seniors

(1) ~~In~~ Factors to be considered when determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or professional designation indicating or implying that ~~a person~~ an insurance agent has special certification or training in advising or servicing seniors; ~~factors to be considered shall~~ include:

(a) Use of one or more words such as "senior," "retirement," "elder," "medicare," or like words combined with one or more words such as "certified," "registered," "chartered," "advisor," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(b) The manner in which those words are used or combined.

(2) For purposes of this rule, a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency is not a certification or professional designation; unless it is used in a manner that would confuse or mislead a reasonable consumer, when the job title:

(a) Indicates seniority or standing within the organization; or

(b) Specifies an individual's area of specialization within the organization.

(H) Penalties

A violation of this rule is an unfair and deceptive trade practice under sections 3901.19 to 3901.26 of the Revised Code and a dishonest practice under division (B)(9) of section 3905.14 of the Revised Code.

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(I) Severability

~~If any paragraph, subparagraph, term or provision of this rule be adjudged invalid for any reason, such judgment shall not affect, impair, or invalidate any other paragraph, subparagraph, term or provision of this rule, but the remaining paragraphs, subparagraphs, terms and provisions shall be and continue in full force and effect.~~If any portion of this rule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or related rules which can be given effect without the invalid portion or application, and to this end the provisions of this rule are severable.